

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

CRYSTAL HELBIG, Individually and,
As Mother and Next Friend of
P.B., *et al.*,

Plaintiffs,

v.

UNIVERSITY OF MARYLAND ST. JOSEPH
MEDICAL CENTER,

Defendant.

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CASE NO.: 1:17-cv-02528-JMC

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**MOTION TO COMPEL FINK AND CARNEY'S COMPLIANCE WITH SUBPOENA
AND COURT ORDER AND REQUEST FOR FEES AND COSTS**

Defendant, University of Maryland St. Joseph Medical Center ("St. Joseph"), by and through its counsel, Neal M. Brown, Christina N. Billiet, Kaitlan M. Skrainar, and Waranch and Brown, LLC, hereby submits this Motion to Compel Fink and Carney Reporting and Video Services' ("Fink and Carney") Compliance with Subpoena and Court Order, and Request for Fees and Costs pursuant to Rule 45(g) of the Federal Rules of Civil Procedure, and states as follows¹:

1. On May 15, 2018, St. Joseph served a valid subpoena on Fink and Carney requiring it to produce certain documentation relevant to the litigation in the captioned case. On July 9, 2018, following motions practice², the Honorable Katherine B. Forrest of the Federal District Court for the Southern District of New York ("SDNY") ordered Fink and Carney to "provide a list, based upon information recently obtained from a centralized server or database of each

¹ Upon transfer from the SDNY, this matter was assigned to Judge Russell under a different case number (1:18-cv-02642-GLR). Pursuant to a conference yesterday with Judge Coulson, we are filing this Motion under the above case number, and to his attention.

² Fink and Carney filed a Motion to Quash.

instance in which Dr. Gubernick was deposed for the past three years,” including the name of the case, date of the deposition and name of attending counsel. *See Exhibit 1*, July 9th SDNY Order.

2. **Notably, Fink and Carney did not request that this matter be transferred to Maryland, did not retain Plaintiffs’ counsel to represent it³ and did not file a motion for reconsideration of Judge Forrest’s Order (pursuant to the Local Rules issued by the Southern District of New York and the District of Maryland, any motion for reconsideration must have been filed within 14 days of Judge Forrest’s Order).**

3. As a professional courtesy, on July 20, 2018, counsel for St. Joseph agreed to an extension to **August 20, 2018**, for Fink and Carney to comply with the July 9th Order. *See Exhibit 2*, Correspondence dated July 20, 2018.

4. On August 16, 2018 – four days before Fink and Carney was to comply with the July 9th Order – Judge Forrest ordered transfer of the matters pending in the SDNY to the District of Maryland and terminated the SDNY case. *See Exhibit 3*, August 16th Order. The transfer was requested by Plaintiffs’ counsel⁴ for reasons unrelated to Fink and Carney (their request for transfer was related to Dr. Gubernick matters). **The transfer did not obviate Judge Forrest’s prior order regarding Fink and Carney.** *See Exhibit 4*, August 23rd Order.

5. But for St. Joseph’s professional courtesy, Fink and Carney would have produced the requested documents in compliance with Judge Forrest’s Order prior to her Order transferring this matter to Maryland.

³ Fink and Carney is represented by New York counsel.

⁴ The Arfaa Law Group.

6. Unfortunately, Fink and Carney has now refused to comply with the SDNY Order and St. Joseph's requests for same. *See Exhibit 5*, Email Correspondence dated August 20, 2018. On August 28, 2018, St. Joseph's counsel advised Fink and Carney's counsel that St. Joseph intended to file this Motion. *See Exhibit 6*, Correspondence dated August 28, 2018. A copy of this Motion was provided to Fink and Carney's counsel in advance of filing and Fink and Carney still refused to produce the documents in accordance with the July 9th Order. *See id.*

7. Rule 45(g) addresses the failure to comply with a subpoena:

(g) Contempt. The court for the district where compliance is required--and also, after a motion is transferred, the issuing court--may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

Fed. R. Civ. P. 45. Fink and Carney has provided no excuse for its blatant disregard of the valid subpoena issued upon it by St. Joseph and Judge Forrest's July 9th Order related to that subpoena.

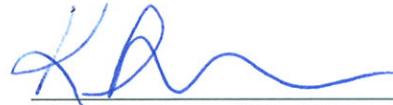
8. For these reasons, St. Joseph seeks an Order compelling Fink and Carney's compliance with the SDNY July 9th Order and the attorney's fees and costs associated with St. Joseph's efforts to seek compliance with the July 9th Order.

9. Moreover, any decision this Court makes regarding Dr. Gubernick and the applicability of the 20% Rule is immaterial to the enforceability of Judge Forrest's Order. The documents to be produced by Fink and Carney are relevant to Dr. Gubernick's credibility and bias.

WHEREFORE, for all the reasons above, Defendant, University of Maryland St. Joseph Medical Center, respectfully requests that this Honorable Court enter an Order compelling Fink and Carney Reporting and Video Services' compliance the Order issued by the Honorable Katherine B. Forrest of the Federal District Court for the Southern District of New York on July

9, 2018, awarding attorney's fees and costs, and any other relief as this Court deems just and proper under the circumstances.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that, on this 30th day of August 2018, a copy of the foregoing Motion to Compel Fink and Carney's Compliance with Subpoena and Court Order and Request for Fees and Costs and Proposed Order was e-mailed to:

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